

Message Text

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64

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DRAFTED BY TREASURY:OS:MFEINBERG:DLS

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TREASURY:OS:RPATRICK

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L/T:WMCQUADE (SUBS)

L/EB:PTRIMBLE (INFO)

EA/K:PMAYHEW

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL IMMEDIATE

UNCLAS STATE 047105

E.O. 11652:N/A

TAGS: EFIN, KS

SUBJECT:KOREAN DEFENSE TAX

REF: STATE 44437

1. QUESTION OF WHETHER IMPOSITION OF KOREAN DEFENSE TAX
ON U.S. SHIPPING AND AIRLINE COMPANIES VIOLATES U.S.-
KOREAN FCN TREATY WAS DEALT WITH IN PARA 2 OF REFTEL.

2. FOLLOWING IS ADDITIONAL BACKGROUND ON PARA 1 REFTEL.
BOTH U.S. AND KOREAN TAX LAWS PROVIDE INCOME TAX EXEMPTION
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FOR FOREIGN SHIPPING AND AIRLINE PROFITS IF FOREIGN
COUNTRY PROVIDES RECIPROCAL EXEMPTION. COMBINATION
OF THESE TWO PROVISIONS HAS RESULTED IN MUTUAL CORPORATE

INCOME TAX EXEMPTION BY U.S. AND KOREA OF SHIPPING AND AIRLINES OF THE OTHER. IF U.S. SHIPPING AND AIR TRANSPORT COMPANIES BECOME SUBJECT TO KOREAN DEFENSE TAX, EVEN IF EXEMPTION FROM BASIC KOREAN INCOME TAX CONTINUES, IRS WOULD PROBABLY TAKE THE VIEW THAT U.S. EXEMPTION IS NO LONGER RECIPROCATED BY KOREA AND U.S. EXEMPTION OF KOREAN AIRLINES AND SHIPPING COMPANIES (UNDER INTERNAL REVENUE CODE SECTION 883) WOULD NO LONGER BE ALLOWED. EMBASSY REQUESTED TO ADVISE KOREAN TAX OFFICIALS OF THIS POSSIBILITY. WE NOW UNDERSTAND U.S. COMPANIES ARE EXPECTED TO

FILE KOREAN RETURNS BY FEBRUARY 27.

3. PARAGRAPH 1(A), ARTICLE 1 OF DRAFT INCOME TAX TREATY (NOW AWAITING SIGNATURE) SPECIFIES THE TAXES COVERED FOR KOREA AS "THE INCOME TAX AND THE CORPORATION TAX". EMBASSY REQUESTED TO DISCUSS WITH KOREAN TAX OFFICIALS WHETHER THE DEFENSE TAX COMES WITHIN THIS DEFINITION. PARAGRAPH 2 APPLIES TO SIMILAR TAXES IMPOSED AFTER THE DATE OF SIGNATURE OF THE CONVENTION. SINCE DEFENSE TAX IMPOSED BEFORE DATE OF SIGNATURE IT WOULD NOT BE COVERED UNLESS IT COMES WITHIN THE SPECIFIED TAXES. IF IT WOULD NOT OTHERWISE BE COVERED, KOREAN OFFICIALS SHOULD BE SOUNDED OUT RE POSSIBILITY OF AMEND-

ING ARTICLE 1, PARA 1(A), BEFORE SIGNATURE, TO INCLUDE SPECIFICALLY THE DEFENSE TAX.

4. EMBASSY SHOULD NOT SIGN TREATY PENDING FURTHER INSTRUCTIONS FROM DEPT.

5. PLEASE ADVISE WHETHER U.S. AIRLINES ARE SUBJECT TO THE DEFENSE TAX. INGERSOLL

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Message Attributes

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